

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: January 13, 2006

DEPT. 71

REPORTER A: Peter Stewart

CSR#3184

PRESENT HON. RONALD S. PRAGER,

REPORTER B:

CSR#

JUDGE

CLERK: K. Bircumshaw

BAILIFF: K. Williams

REPORTER'S ADDRESS: P.O. BOX 120128

SAN DIEGO, CA 92112-4104

JUDICIAL COUNSEL
COORDINATION PROCEEDINGS
NO. JCCP 4221

TITLE [Rule 1550(b)]
NATURAL GAS CASES 1, 11, 111 and 1V

PIPELINE

2:25 p.m. This being the time previously set for **SETTLEMENT APPROVAL** in the above-entitled action, Court convenes with counsel as listed on the attached Sign-In Sheet. Pierce O'Donnell (Plaintiffs), William Kissinger (Calif. Department of Water Resources), Robert Cooper (Semptra), Russ Swartz (So. Cal. Edison), Martin Goyette, John Schaeffer, Eric Saltmarsh address the Court regarding the proposed settlement, the preliminary notice and the scope of the release.

Russ Swartz states for the record that there are objections that remain to the Preliminary Notice as presently constituted. Mr. O'Donnell states that these objections are preserved.

4:10 p.m. The Court is in recess.

4:25 p.m. Court reconvenes with counsel as noted on the Sign-In Sheet present. The Court has one other suggestion to change the Preliminary Notice. Counsel and the Court revise the Notice. The revised Notice, short and long versions, shall be sent to all parties for review.

The Court signs the Proposed Order Certifying the Settlement Class and Scheduling the Hearing on Final Approval, which includes the following:

On or before January 23, 2006, the final long-form notice, after approval of the Court, shall be disseminated by mailing it to the members of the Non-Core Natural Gas Subclass.

On or before April 13, 2006, any member of the New Settlement Subclasses, who is not a member of the Existing Subclasses, may "Opt-Out" of the settlement in writing.

Any member of the Settlement Class having objections, must submit the objections to the Court no later than April 13, 2006, with copies mailed as directed in the Order, postmarked no later than April 15, 2006.

Briefs in support of final approval are to be filed by 5/8/06.

Pursuant to California Rule of Court 1859(g) on June 5, 2006 at 9:30 a.m. in Department 71, a hearing will be held to determine if the proposed Settlement is fair and for final approval by the Court.

-krb-

Case Name *Natural Gas Pipeline*Case Number# *JCCP 4001*ATTORNEY'S NAME
PLEASE PRINTPARTY REPRESENTED
PLEASE PRINT*Martin Goyette**Cal. Attorney General**MARK BRECKLER**CA. ATTORNEY GENERAL**Russell C. Swartz**Southern California Edison Co.**William Kissinger**CA Dept of Water Resources**Erik Saltmarsh**Cal. Electricity Oversight Board**Pierre Donnelly**Plaintiffs**Christa Anderson**Pacific Gas & Electric**DAVE NOONAN**SEMPRA**Paul Traina**IT'S**JEFF LEVY**~~Supra~~ Supra**ROBT. COOPER**Supra**Her Day**Supra**Mr. Fogelman on telephone*

1 O'DONNELL SHAEFFER MORTIMER LLP
2 PIERCE O'DONNELL (State Bar No. 081298)
3 JOHN J. SHAEFFER (State Bar No. 138331)
4 TIMOTHY J. TOOHEY (State Bar No. 140117)
5 NINA D. FROESCHLE (State Bar No. 131897)
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
Telephone: (213) 532-2000
Fax: (213) 532-2020

F I L E D

Clerk of the Superior Court

JAN 13 2005

By: K. BIRCUMSHAW, Deputy

6 Attorneys for Plaintiffs ANDREW AND ANDREA BERG, individually and dba WAVE
7 LENGTH HAIR PRODUCTIONS; GERALD J. MARCIL and JOHN CLEMENT MOLONY

8
9 [ADDITIONAL COUNSEL FOLLOW SIGNATURE BLOCK]

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN DIEGO

13
14
15 Coordination Proceeding Special Title
(Rule 1550(b))

J.C.C.P. Nos. 4221 *et al.*

16 NATURAL GAS ANTI-TRUST CASES,
17 I, II, III, IV

**[PROPOSED] ORDER CONDITIONALLY
CERTIFYING SETTLEMENT CLASS;
GRANTING MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT; AND
SCHEDULING HEARING ON FINAL
APPROVAL OF FINAL SETTLEMENT**

Hearing Date: January 13, 2006

Hearing Time: 2:30 p.m.

Department: 71

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22 Coordination Trial Judge: Hon. Ronald S. Prager
23
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[PROPOSED] ORDER CONDITIONALLY CERTIFYING SETTLEMENT CLASS; GRANTING MOTION
FOR PRELIMINARY APPROVAL OF SETTLEMENT; AND SCHEDULING HEARING ON FINAL
APPROVAL OF FINAL SETTLEMENT

1 WHEREAS, this Court has presided over proceedings in the above-referenced actions
2 and is familiar with the pleadings, records, and papers filed therein;

3 WHEREAS, Plaintiffs on the one hand and Defendant Sempra Energy, a California
4 corporation ("SE"), Defendant Southern California Gas Company, a California corporation
5 ("SoCalGas"), Defendant San Diego Gas & Electric Company, a California corporation
6 ("SDG&E"), Sempra Generation (f/k/a Sempra Energy Resources), a California corporation
7 ("Sempra Generation"), Sempra Energy Trading Corp., a Delaware corporation ("SET"),
8 Sempra Energy Solutions, a California corporation ("SES"), Sempra Energy Power I, a
9 California corporation ("SEP I"), and Sempra Energy Sales, L.L.C., a California limited
10 liability company ("Sempra Energy Sales" and, collectively with SE, SoCalGas, SDG&E,
11 Sempra Generation, SET, SES and SEP I, the ("Sempra Parties"), on the other hand, have
12 entered a settlement (the "Settlement"), a copy of which is attached as Exhibit A;

13 WHEREAS, the Court has already certified a class for this case that include five
14 subclasses as subsequently described below in paragraphs 5-9 (collectively, the "Existing
15 Subclasses");

16 WHEREAS, three new settlement subclasses, as subsequently described in paragraphs
17 10-12, are necessary to carry out the terms of the Settlement (collectively, the "New
18 Settlement Subclasses");

19 WHEREAS, the Court has reviewed the Settlement together with the exhibits thereto
20 and has heard the attorneys for the parties with respect to the proposed Settlement of this
21 action; and

22 WHEREAS, the Court has determined that a hearing should be held at which time the
23 Court will consider whether the Settlement should be finally approved as fair, reasonable and
24 adequate;

25 GOOD CAUSE APPEARING, the Court hereby finds and orders as follows:

26 1. Certification for settlement purposes only of a proposed settlement class,
27 consisting of the Existing Subclasses and the New Settlement Subclasses (collectively, the
28 "Settlement Class") is appropriate under section 382 of the Code of Civil Procedure and Rule

1 1859 of the Rules of Court. There is an ascertainable Settlement Class and a community of
2 interest among the members of the Settlement Class. Certification of the Settlement Class for
3 settlement purposes is the best means for protecting the interests of all of the Settlement Class
4 members.

5 2. Specifically, the Court finds for the purposes of settlement that: (a) the
6 Settlement Class is ascertainable; (b) the members of the Settlement Class are so numerous
7 that joinder would be impractical; (c) there is a community of interest between the members of
8 the Settlement Class; (d) there are questions of law and fact that are common to the Settlement
9 Class, and those common questions predominate over individual questions; (e) the claims of
10 the proposed representatives of the Settlement Class are typical of the claims of the absent
11 members of the Settlement Class to which they belong; and (e) the proposed representatives of
12 the Settlement Class and the proposed counsel for the Settlement Class will fairly and
13 adequately represent the interests of the absent class members.

14 3. Accordingly, the Court hereby certifies, for settlement purposes only, a
15 Settlement Class, which includes the Existing Subclasses and the New Settlement Subclasses,
16 consisting of:

17 All individuals and entities in California that purchased natural
18 gas and/or electricity for use and not for resale or generation of
19 electricity for the purpose of resale, between September 1, 1996
20 and January 4, 2006, inclusive. Excluded from the Class are
21 Defendants, Defendants' predecessors, affiliates, subsidiaries,
22 officers and directors, any and all judges and justices assigned to
23 hear any aspect of this litigation, along with their spouses and any
24 minor children residing in their households, and any persons
25 within the third degree of relationship of any judge or justice
26 assigned to hear any aspect of this litigation.

27 4. The following individuals and entities are appointed as representatives of the
28 Settlement Class: Doug and Valerie Welch, Frank and Kathleen Stella, United Church

1 Retirement Homes, Long Beach Brethren Manor, Robert Lamond, John and Jennifer Frazee;
2 Continental Forge Company; Andrew and Andrea Berg, John C. Molony, Gerald Marcil, and
3 SierraPine, Ltd. The law firms of O'Donnell Shaeffer Mortimer; Girardi & Keese; and
4 Engstrom, Lipscomb & Lack are appointed as lead counsel for the Settlement Class
5 (collectively, "Lead Counsel"). The law firms of Baker, Burton & Lundy; Astrella and Rice,
6 P.C.; M. Brian McMahon; J. Tynan Kelly, Michael J. Ponce, and Douglas A. Stacey are
7 appointed as additional counsel for the Settlement Class (together with Lead Counsel, "Class
8 Counsel").

9 5. The Court hereby includes in the Settlement Class the following previously
10 certified Core Natural Gas Subclass that consists of:

11 All core natural gas customers in Northern and Southern
12 California, excluding Southwest Gas customers located in
13 Southeastern California, but including the retail customers of
14 SoCalGas, SDG&E, or PG&E who purchased natural gas during
15 the class period from July 1, 2000 to July 31, 2001.

16 The following individuals previously appointed as class representatives for the previously
17 certified Core Natural Gas Subclass are appointed as representatives of the Core Natural Gas
18 Subclass: Frank and Kathleen Stella. The law firm of Astrella & Rice P.C. is appointed as
19 lead counsel for the Core Natural Gas Subclass.

20 6. The Court hereby includes in the Settlement Class the following previously
21 certified Non-Core Natural Gas Subclass that consists of:

22 All non-core public utility customers of SoCal Gas, SDG&E,
23 Sempra and PG&E in California who, for the period July 1, 2000
24 to July 31, 2001: (i) purchased natural gas supplies in the
25 Southern California border market; (ii) purchased gas supplies
26 under price formulas that incorporate, in whole or in part,
27 published index prices for natural gas supplies at the Southern
28 California border; or (iii) purchased natural gas supplies in

1 California (including at a point where gas is received into the
2 SoCal Gas or PG&E systems, or in the PG&E city-gate market
3 where gas is delivered from PG&E's main pipelines into its local
4 transmission and distribution pipelines) at prices determined by or
5 linked to published index prices for natural gas supplies at the
6 Southern California border. Excluded from the class are
7 marketers of natural gas and purchasers of natural gas for
8 generation of electricity for the sole purpose of resale.

9 Continental Forge Company, who was previously appointed class representative for the
10 existing, certified Non-Core Natural Gas Subclass, is appointed as the representative of the
11 Non-Core Natural Gas Subclass. The law firm of Engstrom, Lipscomb & Lack is appointed as
12 lead counsel for the Non-Core Natural Gas Subclass.

13 7. The Court hereby includes in the Settlement Class the following previously
14 certified Electricity Subclass that consists of:

15 All residential, business, and wholesale purchasers of electricity
16 from July 1, 2000 to August 6, 2003 in California from either
17 SDG&E, Southern California Edison and/or PG&E who were not
18 protected by the rate freeze described in CPUC Decision No. 001-
19 01-018 dated January 4, 2001, as well as those who were
20 purchasers of electricity who were surcharged as a result of the
21 same CPUC decision. This sub-class does not include any
22 California municipalities or utility districts and/or the ratepayers
23 served by those municipalities or utility districts.

24 The following individuals who were previously appointed class representatives for the
25 existing, certified Electricity Subclass are appointed as representatives of the Electricity
26 Subclass: John C. Molony and Gerald Marcil. O'Donnell Shaeffer Mortimer, LLP are
27 appointed as lead counsel for the Electricity Subclass.

28

1 8. The Court hereby includes in the Settlement Class the following previously
2 certified Direct Access Electricity Subclass that consists of:

3 All residential, commercial, industrial, and wholesale purchasers
4 of electricity who purchased through a direct access electric
5 market other than through the California Power Exchange from
6 July 1, 2000 to August 6, 2003.

7 SierraPine, Ltd., which was previously appointed as class representative for the Direct
8 Access Electricity Subclass, is appointed as representatives of the Direct Access Electricity
9 Subclass: The law firm of Baker, Burton & Lundy is appointed as lead counsel for the
10 Direct Access Subclass.

11 9. The Court hereby includes in the Settlement Class the following previously
12 certified Long Beach Subclass that consists of:

13 All customers, residential and business, of Long Beach's gas
14 utility from July 1, 2000 to July 31, 2001.

15 The following individuals and entities who were previously appointed representatives of the
16 existing, certified Long Beach Subclass are appointed as representatives of Long Beach
17 Subclass: United Church Retirement Homes, Long Beach Brethren Manor, and Robert
18 Lamond. M. Brian McMahon is appointed as lead counsel for the Long Beach Subclass.

19 10. The Court hereby certifies for settlement purposes only a new Municipality
20 Ratepayer Settlement Subclass that consists of

21 All individuals and entities who purchased electricity in California
22 for their own use and not for resale between July 1, 2000 to
23 August 6, 2003, from a municipality or utility district.

24 The following individuals and entities are appointed as representatives of the Municipality
25 Ratepayer Subclass: Doug and Valerie Welch. The law firm of Douglas Stacey is appointed as
26 lead counsel for the Municipality Ratepayer Settlement Subclass.

27 11. The Court hereby certifies for settlement purposes only a Southwest Gas
28 Settlement Subclass that consists of

1 All individuals and entities who purchased natural gas in
2 California for their own use and not for resale and not for
3 generation of electricity between July 1, 2000 and July 31, 2001
4 and are customers of Southwest Gas Company in the Southeast
5 portion of California.

6 The following individuals and entities are appointed as representatives of the Southwest Gas
7 Subclass: John and Jennifer Frazee. Michael J. Ponce is appointed as lead counsel for the
8 Southwest Gas Subclass.

9 12. The Court hereby certifies for settlement purposes only a new Natural Gas and
10 Electricity Settlement Subclass that consists of:

11 All individuals and entities who purchased natural gas and/or
12 electricity in California for their own use and not for resale, and, with
13 respect to natural gas, not for generation of electricity, from
14 September 1, 1996 through January 4, 2006 .

15 The following individuals and entities are appointed as representatives of the Natural Gas and
16 Electricity Settlement Subclass: Andrew and Andrea Berg. Girardi & Keese is appointed as
17 counsel for the Natural Gas and Electricity Subclass.

18 13. Membership in the eight subclasses is subject to the same limitations and
19 exclusions as the Settlement Class as set forth in paragraph 3.

20 14. The Settlement is the product of arms-length, serious, informed, and non-
21 collusive negotiations between experienced and knowledgeable counsel who have ably
22 prosecuted and contested this litigation. The Settlement therefore enjoys a presumption of
23 fairness, and meets that standards of preliminary approval. Accordingly the Court grants
24 preliminary approval of the Settlement.

25 15. The form and content of the proposed summary notice for publication attached
26 hereto as Exhibit B satisfies the requirements of Rules 1856(d) and 1859(f) of the California
27 Rules of Court and is hereby approved for dissemination to the Settlement Class. The Court
28 understands and expects that Lead Counsel will shortly submit a proposed long-form notice

1 for dissemination to the Non-Core Natural Gas Subclass and the Court will consider that
2 notice at that time.

3 16. The proposed plan for dissemination of the notices is similar to the plan
4 approved by the Court with respect to the prior settlement in this action involving other
5 defendants. The proposed plan for disseminating the notices is reasonably calculated to reach
6 a substantial percentage of class members and satisfies the requirements of due process.
7 Concurrent with the filing of their motion for preliminary approval, Lead Counsel filed a
8 declaration from Poorman Douglas supporting the reasonableness of notice along with
9 supporting exhibits. Pursuant to Rule 1856(e) of the Rules of Court, the Court finds that
10 personal notification of the Settlement Class other than the Non-Core Natural Gas Subclass –
11 which would include almost every household and business in the State of California – would
12 be unreasonably expensive, especially in light of the fact that subclass members will receive
13 the benefits of the Settlement without the necessity of filing claims, and that publication of a
14 summary notice is therefore an appropriate means of notifying these subclass members of the
15 proposed Settlement. Pursuant to Rule 1856(e) of the Rules of Court, the Court finds that
16 mailed notices to the Non-Core Natural Gas Subclass members is appropriate, in light of the
17 much smaller number of such subclass members, the much greater size of their potential
18 claims, and the fact that members of this subclass must submit claims in order to receive their
19 share of the proceeds of the Settlement.

20 17. On or before January 16, 2006, the summary notice for publication
21 substantially in the form attached here to as Exhibit B shall be disseminated for publication in
22 the newspapers and magazines listed in Exhibit C to this order. Proof of publication of the
23 summary notice shall be filed by Lead Counsel at, or prior to the final approval hearing.

24 18. On or before JANUARY 23 ²⁰⁰⁶, the final long-form notice substantially in a
25 form approved by the Court following Lead Counsel's submission of such notice to the Court
26 shall be disseminated by mailing it to the member of the Non-Core Natural Gas Subclass.
27 Proof of publication of the long-form notice shall be filed by Lead Counsel at, or prior to the
28 final approval hearing.

1 19. The long-form notice shall also be posed on the website
2 www.naturalgasantitrustlitigation.com and shall be mailed to any Settlement Class member
3 who requests a copy by calling the toll-free telephone number provided on the summary
4 publication notice. Lead counsel for the Settlement Class shall also post a copy of this Order,
5 the Settlement Agreement with its Exhibits, and papers filed in support of final approval of the
6 Settlement on the website, and may post such additional documents and information on the
7 website as they see fit, subject to approval by counsel for the Settling Defendants. The
8 expenses of printing, mailing, and publishing the notices, the expenses associated with
9 maintaining and staffing the toll-free number, and the expenses of creating and maintaining
10 the website, shall be paid by the Plaintiffs' class counsel, subject to reimbursement as an
11 expense as part of any fee petition, as provided in the Settlement Agreement.

12 20. Any member of the New Settlement Subclasses, who is not a member of the
13 Existing Subclasses, may request exclusion from the Settlement Class by personally signing
14 and mailing such request, postmarked on or before April 13, 2006 (the "Opt-Out
15 Deadline"), to:

16 Sempra Exclusions
17 c/o Brad Baker, Esq.
18 BAKER, BURTON & LUNDY
19 515 Pier Avenue
20 Hermosa Beach, CA 90254

21 All members of the Existing Subclasses previously received notice and were given an
22 opportunity to request exclusion from the Existing Subclasses. No member of the Existing
23 Subclasses has the right to be excluded from the Settlement Class.

24 21. A request for exclusion shall state the name and address of the class member
25 requesting exclusion, and, in substance, that the class member elects to be excluded from the
26 Settlement Class. Any member of the New Settlement Subclasses, who is not a member of the
27 Existing Subclasses, who timely exclude themselves in this manner will not be bound by any
28 judgment entered in connection with this settlement. Members of the Settlement Class who
 cannot or do not timely exclude themselves in this manner will be bound by the terms of this
 Settlement, if it is finally approved by the Court, and by any judgment entered pursuant

1 thereto. Copies of any exclusions received pursuant to this paragraph shall be provided to
2 counsel for Sempra Parties not more than ten (10) calendar days after the Opt-Out Deadline.

3 22. Members of the Settlement Class who cannot or do not exclude themselves
4 from the Settlement Class may, but need not, enter an appearance in these coordinated actions
5 through their own attorney. Class members who do not enter an appearance through their own
6 attorneys will be represented by counsel appointed to represent the Settlement Class. SET BY

7 23. Pursuant to California Rule of Court 1859(g), on ~~May 15 2006~~ ^{May 15 2006} ^{at the}
8 hearing will be held in the Courtroom of the undersigned, San Diego Superior Court, ^{SYND 5, 2006 COURT RM} ^{at 9:30 AM}
9 Department 71, 330 W. Broadway, San Diego, California 92101, to determine whether the
10 proposed Settlement is fair, reasonable, and adequate, and whether it should be finally
11 approved by the Court and the claims against the Sempra Parties dismissed on the merits, with
12 prejudice and without costs as to the Sempra Parties, except as provided in the Settlement
13 Agreement. At the same time, the Court shall hold a hearing on the application(s) of Class
14 Counsel for an award of attorneys' fees and expenses, which shall be paid exclusively out of
15 the Settlement consideration provided by the Sempra Parties. The hearing may be continued
16 from time to time without further notice to the Settlement Class, except that any change in the
17 date, time, or location of the hearing shall be promptly posted on the website.

18 24. Briefs in support of final approval of the proposed Settlement and Class
19 Counsel's application(s) for attorneys' fees and expenses shall be filed on or before

20 May 1st 8 AM 2006 ^{file}

21 25. Any member of the Settlement Class who cannot or has not timely requested
22 exclusion may appear at the final approval hearing and show cause why the Court should not
23 approve this Settlement, and dismiss the actions, with prejudice, as to the Sempra Parties, and
24 may appear at the hearing to support or oppose class counsel's application for attorneys' fees
25 and expenses. For a member of the Settlement Class to have any objections considered at the
26 hearing, the class member must file, no later than April 13 2006, with the Clerk of the San
27 Diego Superior Court, 330 W. Broadway, Room 225, San Diego, CA 92101, a statement
28 which includes (a) the name and number of this coordination proceeding, NATURAL GAS

1 ANTI-TRUST CASES I, II, III & IV, J.C.C.P. No. 4221, *et al.*; (b) the class member's
2 complete name and residence or business address (giving the address of any lawyer who
3 represents the class member is not sufficient); (c) that the class member purchased natural gas
4 or electricity in California during the period September 1, 1996, through January 4, 2006
5 inclusive; and (d) each ground for comment or objection and any supporting papers the class
6 member desires the Court to consider. Copies of this statement must also be sent by first-class
7 mail to:

8 Walter Lack, Esq.
9 ENGSTROM, LIPSCOMB & LACK
10 10100 Santa Monica Boulevard, 16th Floor
11 Los Angeles, CA 90067-4107

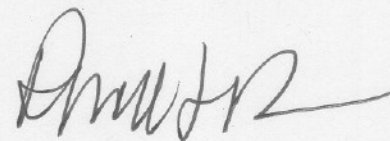
12 Robert Berry
13 GIBSON, DUNN & CRUTCHER LLP
14 333 South Grand Ave.
15 Los Angeles, CA 90071

16 and must be postmarked not later than April 15, 2006. The filing of any objection shall
17 not extend the time within which a class member may file a request for exclusion from the
18 Settlement Class.

19 26. If the Settlement Agreement is not approved by the Court or does not become
20 effective for any reason, the Settlement Agreement and certification of the Settlement Class
21 herein shall be terminated. This shall have no effect on the Court's prior order granting
22 certification of the Existing Subclasses in this matter. The Sempra Defendants deny any
23 wrongdoing or liability and nothing in the Settlement Agreement or this order shall be
24 considered an admission of wrongdoing by any Sempra Defendant or a finding of wrongdoing
25 by this Court.

26 **IT IS SO ORDERED.**

27 Dated: January 13, 2006



28 HON. RONALD S. PRAGER
Coordination Trial Judge
Superior Court of the State of California
County of San Diego

1 Respectfully submitted,

2 DATE: January 13, 2006

3 ENGSTROM, LIPSCOMB & LACK
4 O'DONNELL SHAEFFER MORTIMER LLP
5 LAW OFFICES OF M. BRIAN McMAHON
6 GIRARDI & KEESE
7 ASTRELLA & RICE P.C.
8 BAKER, BURTON & LUNDY, P.C.

9 By: /s/ Pierce O'Donnell
10 PIERCE O'DONNELL

11 Attorneys for Plaintiffs CONTINENTAL
12 FORGE COMPANY; ANDREW and ANDREA
13 BERG, individually and dba WAVE LENGTH
14 HAIR PRODUCTIONS, and GERALD J.
15 MARCIL; FRANK and KATHLEEN STELLA;
16 JOHN CLEMENT MOLONY; DOUGLAS AND
17 VALERIE WELCH; SIERRAPINE, LTD.; THE
18 CITY OF LONG BEACH, THE PEOPLE OF
19 THE STATE OF CALIFORNIA, UNITED
20 CHURCH RETIREMENT HOMES, LONG
21 BEACH BROTHERS MANOR, and ROBERT
22 LAMOND; and THE CITY OF LOS ANGELES
23 and THE PEOPLE OF THE STATE OF
24 CALIFORNIA

25 DATED: January 13, 2006

26 MICHAEL J. PONCE
27 DOUGLAS A. STACEY

28 By: /s/ Michael J. Ponce
MICHAEL J. PONCE

Attorneys for Plaintiffs FRANK and
KATHLEEN STELLA; and DOUGLAS and
VALERIE WELCH

1 ENGSTROM, LIPSCOMB & LACK
A PROFESSIONAL CORPORATION
2 WALTER J. LACK (State Bar No. 057550)
PAUL A. TRAINA (State Bar No. 155805)
3 RAHUL RAVIPUDI (State Bar No. 204519)
ELIZABETH HERNANDEZ (State Bar No. 204322)
4 SEAN TOPP (State Bar No. 217701)
10100 Santa Monica Boulevard, 16th Floor
5 Los Angeles, CA 90067-4107
Telephone: (310) 552-3800
6 Fax: (310) 552-9434

7 Attorneys for Plaintiffs CONTINENTAL FORGE COMPANY
and CITY OF LOS ANGELES
8
GIRARDI & KEESE
9 THOMAS V. GIRARDI (State Bar No. 036603)
HOWARD B. MILLER (State Bar No. 031392)
10 DAVID N. BIGELOW (State Bar No. 181528)
1126 Wilshire Boulevard
11 Los Angeles, CA 90017-1904
Telephone: (213) 977-0211
12 Fax: (213) 481-1554

13 BAKER, BURTON & LUNDY, a Professional Corporation
BRAD N. BAKER (State Bar No. 065106)
14 ALBRO L. LUNDY III (State Bar No. 123133)
ANNE McWILLIAMS (State Bar No. 129264)
15 515 Pier Avenue
Hermosa Beach, CA 90254
16 Telephone: (310) 376-9893
Fax: (310) 376-7483
17
Attorneys for Plaintiffs SIERRAPINE, LIMITED
18
ASTRELLA & RICE P.C.
19 LANCE ASTRELLA (State Bar No. 056478)
1801 Broadway, Suite 1600
20 Denver, CO 80202
Telephone: (303) 292-9021
21 Fax: (303) 296-6347

22 MICHAEL J. PONCE, (State Bar No. 120100)
ATTORNEY AT LAW
23 Law Offices of Michael J. Ponce
9550 Flair Drive, Ste. 407
24 El Monte CA 91731
Telephone: (714) 373-0440
25 Fax: (714) 373-2298

26 DOUGLAS A. STACEY, ESQ., (State Bar No. 159976)
ATTORNEY AT LAW
27 P.O. Box 55
Laguna Beach, CA 92652
28 Telephone: (949) 499-1637
Fax: (208) 475-7798

1 J. TYNAN KELLY P.C.
2 J. TYNAN KELLY (admitted *pro hac vice*)
3 Nine Greenway Plaza, Suite 3100
4 Houston, TX 77046
5 Telephone: 713-888-1809
6 Fax: 713-871-2024
7 Attorneys for Plaintiffs FRANK and KATHLEEN STELLA, and DOUGLAS and VALERIE
8 WELCH

9 LAW OFFICES OF M. BRIAN McMAHON
10 M. BRIAN McMAHON (State Bar No. 083795)
11 550 South Hope Street, Suite 2000
12 Los Angeles, CA 90071
13 Telephone: (213) 532-2190
14 Fax: (213) 532-2020

15 Attorneys for Plaintiffs CITY OF LONG BEACH, UNITED CHURCH RETIREMENT
16 HOMES, LONG BEACH BRETHERN MANOR, and ROBERT LAMOND

17 LONG BEACH CITY ATTORNEY
18 ROBERT E. SHANNON (State Bar No. 043691)
19 333 West Ocean Boulevard, 11th Floor
20 Long Beach, CA 90802
21 Telephone: (562) 570-2200
22 Fax: (562) 436-1579

23 Attorneys for Plaintiff CITY OF LONG BEACH

24 LOS ANGELES CITY ATTORNEY
25 ROCKARD DELGADILLO (State Bar No. 125465)
26 EDWARD J. PEREZ (State Bar No. 067107)
27 DONALD I. KASS (State Bar No. 103607)
28 200 N. Main Street, 1600 City Hall East
Los Angeles, CA 90012
Telephone: (213) 485-4515
Fax: (213) 847-3014

Attorneys for Plaintiff CITY OF LOS ANGELES